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**REMARKS**

Claims 1-142 were pending in this application. Claims 1, 3, 7, 8, 17, 20, 25, 26, 41, 50, 51, 54, 55, 58, 89-91, 93-95, 97-100, 103-106, 109, 111, 112, 114, 119, and 122 have been amended. Claims 2, 52, 53, 56, 86-88, 101, 102, 107, 108, 113, 115-118, 120, 121, and 123-142 have been canceled without prejudice. No claims have been added. It is respectfully submitted that all remaining claims now stand in condition for allowance. Accordingly, reconsideration and withdrawal of all outstanding rejections is requested at this time.

**Formal Rejections:**

Claims 1, 41 and 50 were rejected under 35 U.S.C. 112, 2<sup>nd</sup> paragraph due to the use of the phrase "such as." Each of these claims has been amended to remove the offending language. Applicants thus respectfully request reconsideration and withdrawal of all outstanding formal rejections at this time.

**Art Rejections**

Claims 1-4, 7-17, 19-25, 27-42, 44-48, 50-60, 62-67, 69-73, 75-80, 87-125, 127-129, 131-133, 135, 137, 138, and 142 were rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent 4,552,857 to Higgins (HIGGINS '857) in view of U.S. Patent 5,610,207 to DE SIMONE et al. Continued rejection of the remaining claims on this basis is respectfully traversed and reconsideration is requested at this time.

Claims 1 and 41 have been amended to call for a carpet tile including a rebond foam cushion having an upper surface of rebond foam. Claim 2 was cancelled. Claims 3, 7, 8, 17, 25, and 91 were amended to be consistent with or to a dependent from claim 1. Claim 26 was amended to add a lower surface of rebond foam. Claim 50 was amended to call for a preformed rebond foam. Claim 54 was amended to call for a carpet tile. Claim 55 was amended to call for an upper rebond surface. Claim 58 was amended to call for an upper surface of rebond foam. Claims 89, 90, 93-95, 97-99, 105, 106, 109, 111, 112, and 122 were amended to call for a rebond

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foam cushion. Claims 93-95, 97-100, 103-106, 109, 111, 112, 114, 119, and 122 were amended to depend from claim 91.

DE SIMONE et al. does not appear to be directed to a carpet tile or to modular carpet.

In making a determination of obviousness, the references must be considered for everything they teach including portions which would lead away from the claimed invention. With the background of the teachings of the prior art, a proper obviousness analysis requires consideration of whether the prior art would have provided a motivation to one of skill in the art to engage in the proposed combination or modification as well as whether or not such a person would have a reasonable expectation that such a combination or modification would be successful.

In view of the narrow and restricted teachings in the secondary reference to DE SIMONE et al. regarding suitable constructions for rebonded foam in carpet backing applications, it is respectfully submitted that one of skill in the art having access to the DE SIMONE et al. reference would actually be discouraged from attempting to modify the constructions disclosed in the primary HIGGINS '857 reference to incorporate rebonded foams due to the apparent need (as taught by DE SIMONE et al.) to encapsulate such foams between two exterior layers and that at least one (and preferably both) of the exterior layers should be foam plastic material. Moreover, it is respectfully submitted that these teachings in the prior art are inconsistent with a conclusion that the prior art would provide one of skill in the art with a reasonable expectation that the direct substitution of rebond foam for the foam layer in the carpet tile of the HIGGINS '857 patent would be successful. Finally, even if the substitution contemplated by the Office Action were undertaken, a carpet tile as presently claimed would not be achieved since the adhesive would necessarily contact one of the outer layers of the laminate construction from DE SIMONE et al. rather than the rebond foam surface.

The outstanding rejection states that "... it would have been obvious to one of skill in the art to substitute a rebond foam layer as taught by DE SIMONE, for the foam layer in HIGGINS." Applicants respectfully submit that when considered in its entirety, DE SIMONE et al. requires

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that the rebonded foam be laminated between two outer layers. As best understood, there is no teaching of the ability to use a rebonded foam layer in a carpet construction without these outer layers. Thus, there is no teaching or suggestion of the ability to form a carpet tile with adhesive in contacting relation to a rebond foam surface.

In order to make the substitution contemplated by the Office Action, the teachings of DE SIMONE et al. would have to be ignored so that the upper surface of the rebond foam does not have an outer covering layer thereby permitting the adhesive to contact the rebond foam surface. Alternatively, if the proposed substitution is made while following the teachings of DE SIMONE et al., the adhesive would necessarily contact one of the outer layers rather than the rebond surface as claimed. Moreover, a substantially different multi-layered construction would be imparted to the cushioning layer in the primary reference HIGGINS '857 carpet tile. This would likely be expected to alter the performance of the HIGGINS '857 carpet tile thereby weighing against any motivation to make the change.

In light of the teachings in DE SIMONE et al. indicating the requirement for two exterior layers, it is respectfully submitted that the combination of references as applied in the prior Office Action fails to establish a proper *prima facie* case of obviousness with respect to any of the pending claims and is based on improper hindsight.

Carpet tile usually has different dimensional stability requirements than broadloom carpet. Thus, even if a rebonded foam construction as taught in DE SIMONE et al. could be used with a reasonable expectation of success in a broadloom carpet, such an expectation would not translate to a carpet tile in which performance requirements are much greater. Certainly, there would be no reasonable expectation that such a construction would perform successfully in a carpet tile.

Claims 5, 6, 18 and 43 were rejected under 35 U.S.C. 103(a) as being obvious over HIGGINS '857 and DE DIMONE et al. and further in view of EP 048 986. Continued rejection on this basis is respectfully traversed and reconsideration is requested on the grounds as set forth above that the primary combination of references fails to establish a *prima facie* case of obviousness with respect to the base independent claims.

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Claims 26, 49 and 81-85 were rejected under 35 U.S.C. 103(a) as being obvious over HIGGINS '857 and DE SIMONE et al. and further in view of U.S. Patent 5,540,968 to Higgins (HIGGINS '968). Continued rejection on this basis is respectfully traversed and reconsideration is requested on the grounds that the primary combination of references fails to establish a *prima facie* case of obviousness with respect to the base independent claims as set forth above. Moreover, it is respectfully submitted that by advocating two covering layers over the rebond foam DE SIMONE et al. actually teaches away from constructions which specifically recite backing structures other than foam plastic material. In this regard it is noted that DE SIMONE et al. indicates that it is preferred that the adhesion of the rebond be to a foam plastics material. Thus, by using other backing structures against the rebond, the present invention departs even further from the teachings of DE SIMONE et al. Moreover, one of skill in the art using DE SIMONE et al. as a guide would likely conclude that the possibility of failure at the formed interface between the rebond and non-foam backing structures would weigh heavily against attempting any such construction.

Finally, Claims 61, 68 and 74 were rejected under 35 U.S.C. 103(a) as being obvious over HIGGINS '857 and DE SIMONE et al. and further in view of U.S. Patent 5,616,200 to Hamilton. Continued rejection on this basis is respectfully traversed and reconsideration is requested on the grounds as set forth above that the primary combination of references fails to establish a *prima facie* case of obviousness with respect to the base independent claims.

#### CONCLUSION:

For the reasons set forth above, it is respectfully submitted that all remaining claims stand in condition for allowance. In the event that any issue remains unresolved, the Examiner is encouraged to contact the undersigned attorney in the hope that such issue may be resolved in an expedient and satisfactory manner.

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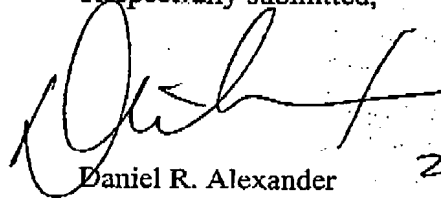
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To any extent required, a petition for an extension of time is hereby made and authorization is provided to deduct any fee necessary for the acceptance of this paper from Deposit Account 04-0500.

February 26, 2004

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Respectfully submitted,

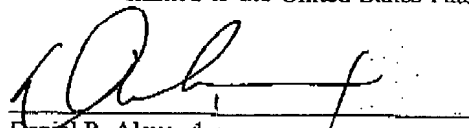


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2/26/04

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office at 703-872-9306 on February 26, 2004.



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